IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/12/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.22463 of 2003
and
Crl.M.P.Nos.6401 and 6402 of 2003

Mrs.J.Mala,
Proprietrix,
Jayem International,
Ekkaduthangal,
Chennai-97. ... Petitioner

-Vs-

Modern Cargo Services Pvt.Ltd.,
Rep. by its Power of Attorney
Holder Mr.C.P.Sanjeev,
T.Nagar, Chennai-17. ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.K.Alagirisamy, S.C.
For Mr.V.Venkatasamy

For respondents : Mr.P.N.Prakash.

:O R D E R

Petitioner who is the accused in C.C.No.13554 of 2002 on the file of the Court of XIII Metropolitan Magistrate, Egmore, Chennai has filed this Criminal Original Petition praying to quash the said proceeding.

2. Tracing the history of the case, what comes to be known is that the respondent herein filed a private complaint against the petitioner herein for the offence under Section 138 of N.I. Act and the same has been taken on file by the XIII Metropolitan Magistrate, Egmore, Chennai. Now the petitioner herein has come forward to file the above Criminal original Petition praying to quash the said proceeding on grounds that as per proviso (b) to Section 138 of Negotiable Instruments Act, the payee, the respondent herein, has to make a demand for the payment of the cheque amount in writing and on failure to pay the cheque amount within 15 days from the date of receipt of such demand, an offence under Section 138 of N.I.Act is made out;

that in the present case, the respondent-complainant issued a lawyer notice dated 26.8.2002 and claimed action without specific demand with respect to payment of the cheque amount, which is extracted below:
"My client hereby calls upon you to pay and clear the amounts due to my client being a sum of Rs.3,77,662/- which sum is inclusive of the sum of Rs.3,00,000/- due under the dishonoured cheques issued by you in favour of my client together with interest at the rate of 24% p. a. within 15 days of receipt of this notice, failing which my client shall be constrained to institute appropriate proceedings against you for recovery of the said amount and shall also prosecute you for offences committed under the provisions of Sec.138 of the Negotiable Instruments Act and shall hold you liable for all the costs and consequences thereto."
but the respondent has stated in the complaint that the demand was made for the entire outstanding due from the petitioner. That being so, the alleged

notice is not a statutory notice specified in proviso (b) to Section 138 of the Act. On such grounds the petitioner has come forward to file this Criminal Original Petition praying for the relief extracted supra.

3. The respondent/complainant has opposed the said Criminal Original Petition filed by the petitioner/accused by filing a counter thereby submitting that a full reading of the notice issued by the complainant dated 26.8.2002 would disclose the entire transaction including the factum of dishonour of three cheques; that the notice also contains the particulars such as the cheque number, date of cheque, amount of the cheques unambiguously and thus the petitioner/accused has been thoroughly apprised of all details relating to the dishonour of the three cheques; that it is relevant to point out that the petitioner/ accused has admitted the receipt of the notice in their reply notice dated 2.9.2002 would show that the petitioner/accused is well-aware of the dishonour of her three cheques.

4. The respondent would also cite a judgment of the Hon'ble Apex Court delivered in Sumansethi v. Ajay K.Churiwal reported in 2000 SCC (Cri) 414 wherein it has been held:
"It is well settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the 'said amount' i.e. cheque amount. If no such demand is made, the notice, no doubt, would fall short of its legal requirement. Where, in addition to 'said amount' there is also a claim by way of interest, cost etc., whether the notice is bad would depend on the language of the notice. If in a notice while giving up break-up of the claim, the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, notice might well fail to meet the legal requirement and may be regarded as bad. In S.138 Legislature clearly stated that for the dishonoured cheque, the drawer shall be liable for conviction if the demand is not made within 15 days of the receipt of notice but this is without prejudice to any other provision of the Act. If the cheque amount is paid within the above period or before the complaint is field, the legal

liability under S.138 will cease and for recovery of other demands as compensation, costs, interest etc. a civil proceeding will lie. Therefore, if in a notice any other sum is indicated in addition to the 'said amount', the notice cannot be faulted."

5. Citing the above judgment, the learned counsel for the respondent would submit that the whole reading of the notice dated 26.8.2002 would show in no uncertain terms that the said notice satisfies the legal requirements of Section 138 of the Negotiable Instruments Act inasmuch as it does not keep the accused in dark about the dishonour of her three cheques; that the claim of other amounts in the notice will not in any manner vitiate the notice in the light of the law laid down by the Apex Court; that the demands made in the notice dated 26.8.2002 are clearly severable and, there can be no confusion in the mind of the petitioner as to what is the amount due under the dishonoured cheques.

6. The learned counsel for the respondent would further submit that time and again the upper forums of law have held that the criminal prosecution should not be quashed, lest, it should cause undue prejudice to the parties, who knock at the doors of the court for justice; that the Hon'ble Apex Court has held in Arun Shankar Shukla v. State of Utter Pradesh reported in JT 1999 (4) SC 634 that "inherent powers are in the nature of extraordinary powers to be used for achieving the objection in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object." On such grounds, the respondent would pray to dismiss the above criminal original petition.

7. During arguments, the learned senior counsel would lay emphasis that the notices issued by the respondent through his lawyer dated 26 .8.2002 is not a sufficient notice so as to satisfy the requirements of

proviso (b) to Section 138 of the Negotiable Instruments Act and therefore, would see that there is no proper notice and on such legal flaw the case of the respondent/complainant should fail.

8. On the other hand, on the part of the learned counsel for the respondent, he would cite a judgment reported in 2000 SCC (Cri) 414 and would stress the point that the notice dated 26.8.2002 issued is undoubtedly sufficient notice covering up the liability shown in the cheque to the tune of Rs.3 lakhs which is glaringly brought forth in the notice and therefore, would pray to dismiss the above Criminal Original Petition.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the sole point at which the whole case connected to the above Criminal Original Petition filed by the petitioner/accused is pertaining to the notice contemplated in proviso (b) to Section 138 of the Negotiable Instruments Act and it is the pointed case of the petitioner that the notice issued in the case in hand by the respondent dated 26.8.2002 is not sufficient and the required notice under law and therefore, the case of the respondent should fail. On the contrary, the judgment reported in 2000 SCC (Cri) 414 is clear

to the effect that "if however, in the notice omnibus demand is made without specifying what was due under the dishonoured cheque, notice might well only to meet the legal requirement and may be recorded as bad". However, this is not the case in which notice dated 26.8.2002 issued by the respondent wherein even though a total sum of Rs.3,71,755/- has been shown as due, it has been specifically pointed out in the notice that the said sum is "inclusive of a sum of Rs.3 lakhs due under the dishonoured cheque issued by you in favour of my client" and therefore, no doubt need be entertained that the requirements of law warranted in proviso (b) of Section 138 of the Negotiable Instruments Act has been complied with and therefore, there is no point in loitering too much about this requirement of law having not been complied with and
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V.KANAGARAJ,J
hence it is a case which has to suffer a thorough trial since the legal point raised has become untenable and not applicable to the case in hand.
In result,
(i) the above Criminal Original Petition does not merit acceptance and only becomes liable to be dismissed and is dismissed;
(ii) consequently, Crl.M.P.Nos.6401 and 6402 of 2003 are also dismissed.

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